

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13612 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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NARESHKUMAR I DATANIYA

Versus

STATE OF GUJARAT

Appearance:

MR DG CHAUHAN for Petitioners

MR ST MEHTA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/10/98

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to regularize the petitioners as Class-IV Employees.

2. The petitioner no. 1 was appointed on 22-8-1988 as part time Gardner, while the petitioner no. 2 was appointed as a watchman on 22-2-1985 and since then they are working in the department of Institute of Vocational

Guidance, State Education Bhavan, P.R. Training College Compound, Raikhad, Ahmedabad. The learned counsel for the petitioners submitted that the petitioners have not been regularized as Class-IV employees on permanent basis though the Dy. Director (A), Gujarat Educational Technology Bhavan, Ahmedabad addressed a letter dated 2/6-7-1993 to the Commissioner, Office of the Commissioner of Higher Education, Dr. Jivraj Mehta Bhavan, Block No. 12, Gandhinagar, wherein it was stated that some gardeners who were working in the pay scale of Class-IV employees and who were rendering part-time services in the Government institute were regularized by the office of the Commissioner and he requested to regularize the services of the petitioners on the basis of Government Resolution No.WCB/1588/(5)(1) G-2 dated 17-10-1988 of Road & Building Department, Government of Gujarat. The same Dy. Director again by the letter dated 24-9-1993 recommended for regularization of the petitioners. The same Dy. Director by the letter dated 17-11-1993 recommended to the Commissioner of Higher Education, to issue orders to the petitioners as full time employees who were working as part time employees in the Institution.

3. Learned counsel for the petitioner has relied upon the case of D.C. Wadhwa Vs. Director General of Police and Another in Special Civil Application No.1209/94 decided on 23-7-198 and also on the case of State of Haryana and Others Vs. Parasingh and Others, reported in (1992) 4 Supreme Court Cases, 118.

4. An affidavit-in-reply has been filed by S.B. Dhobi, Dy. Director. But the affidavit-in-reply is not on record. However, the learned counsel for the petitioner placed a copy of that affidavit on record, wherein it is stated that Class IV part time employees employed on hourly remuneration basis may be regularized in light of GCDC No. PTE-1080-288-Ch dated 26-12-80. The office has decided to regularize such part time employees who had put in more than 3 years service and a proposal to Administrative Department including the names of the petitioners though the Government directed that only persons recruited through approved mode of recruitment should be regularized in light of the guidelines given in GCDC No. PTE/1080-288-Ch dated 26-12-80.

5. The petitioners were called for interview in the month of September, 1989 but they were not eligible as they were over aged. It was also stated that two Pattanies recruited through Employment Exchange and they

fulfil the conditions decided by Education Department for interviewing the part time employees. Learned Counsel for the State has also relied on Delhi Development Horticultural Employees Union Vs. Delhi Administration reported in JT 1992 (1) SC 394. But the facts of that case are not attracted to the facts and circumstances of the present case as the persons recruited in the case of Delhi Development Horticultural Employee Union Vs. Delhi Administration were for a particular project.

6. I have gone through the relevant papers. This is a case in which both the petitioners are still working for more than 10 and 13 years continuously. In the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, reported in AIR 1990 SC 371, three Judges Bench of the Supreme Court held that the initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointment of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification.

7. I find that the names of the petitioners were recommended by the Dy. Director, Gujarat Educational Technology, Ahmedabad by several letters basing the Government Circular and the petitioners are working in the Institute for more than 10 years. Learned Counsel for the State could not point out anything contrary to the submissions made by the learned counsel for the petitioners.

8. In view of the decisions of this Court as well as Supreme Court and considering length of the service of the petitioners, I think that the petitioners are entitled for regularization as Class-IV employees from the date of this order.

9. Accordingly, this petition is allowed and the respondents are directed to regularize the petitioners in Class-IV employees forthwith from the date of this order. Rule is made absolute, with no order as to costs.